

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KHARYL PINEDA, a minor, by and through KATHERINE PINEDA, his guardian ad litem, Plaintiff, v. TARGET CORPORATION, Defendant.

) Case No. C-10-4174 SC
) ORDER RE: PLAINTIFF'S
) PETITION FOR MINOR'S
) COMPROMISE

Katherine Pineda, the mother and guardian ad litem of Plaintiff Kharyl Pineda ("Plaintiff"), petitions the Court for approval of a minor's compromise. ECF No. 35 ("Pet."). Plaintiff's Complaint alleges that he suffered injuries after he slipped and fell on Defendant Target Corporation's ("Defendant") premises. Id. ¶ 5. On May 2, 2011, the Court denied the parties' first motion to settle this action for \$3,600. ECF No. 28. On July 14, 2011, the parties participated in a settlement conference with Magistrate Judge Nandor Vadas. Id. ¶ 9. During this conference, Plaintiff's guardian accepted Defendant's settlement offer of \$4,600. Id. ¶ 10. The parties agreed to allow the Court to rule as to how much of this amount would be deposited in an account for the benefit of Plaintiff and how much would be distributed to Plaintiff's guardian, Plaintiff's counsel, and any statutory or contractual lienholders. Id. ¶ 12.

1 Plaintiff's counsel alleges the following: that Kaiser
2 Permanente/Healthcare Recoveries ("Kaiser") has agreed to accept
3 \$292.88 as satisfaction of an alleged lien for Plaintiff's related
4 medical expenses; that Plaintiff's guardian incurred \$265 in out-
5 of-pocket expenses in the form of co-pays to Kaiser and American
6 Medical Response; and that Plaintiff is contractually obligated to
7 pay Plaintiff's counsel "one-third of any amount collected on
8 behalf of the Plaintiff plus reimbursement of costs incurred and
9 advanced on behalf of the Plaintiff." Id. ¶¶ 12, 16, 17.

10 Because Plaintiff is a minor, the settlement will be deposited
11 in a blocked account, with no withdrawals of interest or principal
12 made without approval of the Court until Plaintiff turns eighteen.
13 The Court will not reduce the amount to be deposited for
14 Plaintiff's benefit absent adequate documentation. Plaintiff's
15 counsel attaches a letter from Kaiser evidencing its willingness to
16 accept \$292.88 in satisfaction of the alleged lien, but this
17 agreement references the rejected \$3,600 settlement and states that
18 Kaiser retains "the right to be reimbursed from any additional
19 sources of recovery that may become available." Id. Ex. 2. As
20 such, there is insufficient evidence that Kaiser has perfected a
21 lien or that Kaiser has agreed to accept \$292.88 of the \$4,600
22 settlement in satisfaction of this lien. No evidence is submitted
23 to support Plaintiff's guardian's out-of-pocket expenses,
24 Plaintiff's contractual obligation to pay Plaintiff's counsel one-
25 third of the settlement proceeds, or Plaintiff's counsel's alleged
26 unreimbursed expenses (which Plaintiff's counsel alleges total
27 \$2,854.69). Accordingly, Plaintiff's counsel, Plaintiff's
28 guardian, and any lienholders seeking a portion of the settlement

1 amount are given fifteen (15) days to provide the Court with
2 documentation supporting these set-asides. If no appropriate
3 evidence is provided within this time frame, the Court will direct
4 Defendant to deposit the settlement proceeds in Plaintiff's blocked
5 account.

6

7 IT IS SO ORDERED.

8

9 Dated: August 25, 2011


10 UNITED STATES DISTRICT JUDGE